IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.R. No.680 of 2005
Date of decision:22.8.2007

State of Haryana **.....Petitioner**

Versus

Kulwant Rai & another **.....Respondents**

* * *

Present: Mr. Narender Sura, AAG, Haryana.

Mr. B.L. Gulati, Advocate for the respondents.

S.S. SARON, J

This revision petition has been filed by the State of Haryana against the order dated 8.11.2004 passed by the learned Special Judge, Hisar designated under the Prevention of Corruption Act, 1988. In terms of the impugned order two separate applications filed by the respondents for dropping the criminal proceedings in the case registered against them have been accepted. The proceedings have accordingly been dropped.

The facts of the case are that Guru Jambheshwar University, Hisar (for short the 'University') allotted the contracts for construction of Girls Hostel No.2, Guru Jambheshwar Bhawan, Administrative Block (V.C. Office), VIP Guest House, Teaching Block and Faculty House (including 32 rooms and Dining Hall) to M/s Juneja and Company, N.K. Gupta Contractor, M/s Abhay Kumar Associates, Sham Lal Gupta and M/s Vardhman Construction Company Kulwant Rai (respondent No.1) was a Superintending Engineer and in employment of the Kurukshetra University for the period from 16.11.1978 to 30.6.1998. During this period he was on deputation to the University where he worked from 7.12.1995 to 18.9.1997 K.L.Chakrawati (respondent No.2) was the Sub Divisional Engineer. He retired from service of the Irrigation Department on 31.12.1993 on superannuation. Thereafter, he was appointed by the

University as Sub Divisional Officer (Civil) on contract basis for six months on 11.1.1996 and he remained in service upto 31.8.1998. It was alleged that the respondents were in charge of the construction and in respect of the construction that was carried out an inquiry was conducted. On the basis of technical opinion, it was found that Girls Hostel No.2, Administrative Block and Teaching Block had been constructed in a casual manner and without observing necessary rules. The loss in the construction was worked out on the basis of which the respondents were charge sheeted (challaned) by the police for having committed offences under Section 406/409/418/420/120-B IPC read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short the 'Act'). After filing of challan by the police, the respondents filed separate applications for dropping criminal proceedings against them in view of the provisions of Rule 2.2 (b) of the Punjab Civil Services Rules (Volume-II) (Part I) (as applicable in Haryana) ('Rules' - for short). The learned Special Judge relying on the judgements of this Court in **Sardul Singh vs. State of Punjab** 1993(2) Recent Criminal Reports 417 and **Des Raj Singal vs. The State of Punjab** 1986(1) Punjab Law Reporter 82, accepted the applications of the respondents and dropped the criminal proceedings against them vide impugned order dated 8.11.2004, which is now assailed by the State of Haryana by way of the present petition.

Learned counsel for the petitioner-State has submitted that the judgements relied upon by the learned trial Court in fact stand overruled by the judgement of the Hon'ble Supreme Court in **State of Punjab vs. Kailash Nath** 1989(1) RCR (Criminal) 139 and, therefore, the impugned order dated 8.11.2004 is unsustainable and is liable to be set aside.

In response, learned counsel appearing for the respondents has contended that even though the judgements of this Court as relied upon by the learned Special Judge have been overruled by the judgement

in **State of Punjab vs. Kailash Nath** (supra), he, however, has placed strong reliance on paras 15 and 21 of the said judgement and submitted that there is otherwise a considerable delay in launching of the prosecution and therefore, the order dated 8.11.2004 is in any case liable to be sustained and upheld.

I have given my thoughtful consideration to the contentions of the learned counsel for the parties and perused the records. It is not in dispute that the judgement in **Des Raj's case** (supra) which was relied upon by the learned Special Judge, Hisar while accepting the applications filed by the respondents for dropping the criminal proceedings against them, has since been overruled. The judgement in **Sardul Singh's case** (supra) which is based on the same principle would be deemed to be not laying down good law. It was held by the Hon'ble Supreme Court that in respect of criminal offences committed by a Government Servant during his service, prosecution can be launched against such Government servant after his retirement and no immunity can be granted to the Government Servant from prosecution if four years have passed when the cause of action accrued. It was held that rule 2.2. of the Rules granting such an immunity cannot be framed as a condition of service under Article 309 of the Constitution of India. In para 15 of the said judgement, on which reliance is placed by the learned counsel for the respondents, it was observed that in appeal by the State of Punjab against the judgement of this Court in **Des Raj Singhal's case** (supra), the correctness of the judgement and the questions of law raised in appeal had been left open to be considered in an appropriate case and the question was not dealt with for the reason that the respondent therein had retired as long as on 13.12.1979. Besides, it was concluded in para 21 that on the same principle as in appeal against the judgment of this Court in **Des Raj Singhal's case** had substance as regards the appeal against Kailash

Nath. It was observed that the matter cannot proceed further being a stale matter and the order quashing the First Information Report as against Kailash Nath deserved to be maintained though on a different ground.

In the present case, the buildings in question were constructed between December, 1995 to September, 1997. Respondent No.1 had worked on deputation with the University from 7.12.1995 to 18.9.1997. Thereafter, he retired from service on 30.6.1998. Respondent No.2 retired from the Irrigation Department on 31.12.1993 and thereafter he was re-employed on contractual basis for six months on 11.1.1996, which was extended from time to time till 31.8.1998. The FIR in the present case was registered on 6.6.2002 and the challan was filed in Court on 24.9.2003. Therefore, from the date of relinquishing the respective offices by the respondents till the time of presentation of challan, a period of about five years had lapsed. Thereafter, respondent No.1 had filed an application dated 12.7.2004 for dropping the criminal proceedings. Respondent No.2 filed a similar application dated 12.8.2004 for dropping the proceedings. Both the applications of the respective respondents have been accepted by the impugned order dated 8.11.2004. In fact, at the time of filing the application itself on the basis of Rule 2.2 (b) of the Rules the judgement of this Court in **Des Raj's case** (supra) had been overruled by the judgement in **State of Punjab vs. Kailash Nath (supra).** Therefore, the applications filed on the basis of an overruled judgement were per se improper. The applications having been allowed on the basis of overruled judgements, the order dated 8.11.2004 is unsustainable and the same is liable to be set aside. It is not such a case where there is an inordinate delay or that the matter can be said to be stale merely because the respondents had chosen to file applications on the basis of the aforesaid judgements.

Consequently, the criminal revision petition is allowed and the

impugned order dated 8.11.2004 passed by the learned Special Judge, Hisar is set aside.

Parties through their counsel shall appear before the trial Court on 14.9.2007 for further proceedings.

August 22, 2007 **(S.S. SARON)**
ps **JUDGE**